

REMARKS

Claim Status

Claims 1, 4-12, and 17-18 are pending. Claims 1 and 4 stand rejected under 35 USC § 102. Claims 5-13, 17, and 18 stand rejected under 35 USC § 103. With this response, claim 1 is amended, claim 13 is canceled, and no claims are withdrawn or added.

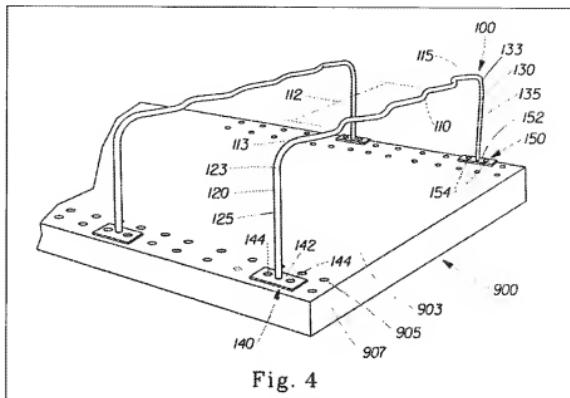
Rejections Under 35 USC § 112 Second Paragraph

In the Office Action of April 3, 2007, claims 1, 4-13, 17 and 18 were rejected under 35 USC § 112 second paragraph as being indefinite. In the Response dated October 3, 2007, the Applicant amended claim 1 and argued that independent claim 1 as well as claims 4-13, 17 and 18 were definite. Since the § 112 rejections were not renewed in the most recent Office Action, the Applicant takes the position that these rejections have been withdrawn.

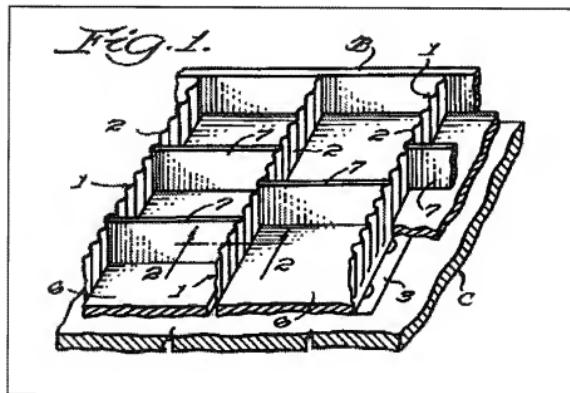
Rejections Under 35 USC § 102 Over Ingelson

Claims 1 and 4 stand rejected under 35 USC § 102(b) as being unpatentable over Ingelson (USPN 2,747,959). The Applicant does not admit that any characterization by the Office Action regarding these rejections is correct, but discusses such characterizations herein for the sake of argument. The Applicant traverses the rejections of the pending claims under 35 USC § 102 over the Ingelson reference for the reasons discussed below.

Independent claim 1, as currently amended, recites in part a “shelf display apparatus” with “a substantially horizontal top support member.” The Applicant’s Figure 4 “depict[s] apparatus 100 having a substantially horizontal top support member 110.” (Page 4, lines 11-12.) For reference, the Applicant’s Figure 4 is provided below.



The Office Action cited an "unnumbered top edge" of a "vertical portion 2" of Figure 1 of the Ingelson reference (col. 2, line 32), against the substantially horizontal top support member of the Applicant's claim 1. (Page 3, paragraph 1.) For reference, Figure 1 of the Ingelson reference is provided below.



The Applicant submits that a top edge of a “vertical portion” cannot be considered “a substantially horizontal top support member” as recited in part in the Applicant’s claim 1.

The last Office Action responded to this argument by stating that “The applicant also argues that the top surface of the Ingelson reference is not ‘horizontal.’ However, as can be clearly seen in all of Ingelson’s figures, the top curved surface of the wall extending between the divider ends is clearly a horizontal surface.” (Page 4, paragraph 1.)

“[T]he words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).” MPEP § 2111.01(I).

The plain meaning of “a substantially horizontal top support member,” as recited in Claim 1, is a distinct element, which, as a whole, is disposed in a substantially horizontal orientation. That is, the words “substantially horizontal” describe the overall orientation of the top support member. This plain meaning is consistent with the Applicant’s specification, which describes the top support member as an elongated element with a proximate end 113, a distal end 115, and an overall length. (Page 4, lines 11-29.)

The vertical portion of the Ingelson reference falls outside the plain meaning of “a substantially horizontal top support member” because the vertical portion, as a whole, is disposed in a vertical orientation. (Ingelson, Col. 2, line 27.) Vertical is not horizontal. The top edge of the vertical portion also falls outside the plain meaning of “a substantially horizontal top support member” because the edge is only part of a vertical portion. A part of an element is not a distinct element. As a result, the Ingelson reference does not disclose a “substantially horizontal top support member” as recited in part in the Applicant’s claim 1.

Independent claim 1, as currently amended, also recites in part “that the first vertical support is connected to the second vertical support solely by the top support member.” The Applicant’s Figure 4 depicts apparatus 100 wherein a first vertical support member 120 is connected to a second vertical support member 130 solely by the top support member 110. (Page 4, lines 11-19.) For reference, the Applicant’s Figure 4 is provided above.

The Office Action cited “unnumbered vertical ends of [vertical portion] 2” of Figure 1 of the Ingelson reference, against the vertical support members of the Applicant’s claim 1. (Page 3, paragraph 2.)

The Applicant points out that the unnumbered vertical ends of the vertical portion 2 of the Ingelson reference appear to be connected continuously to each other over their entire heights, not connected solely by a top support member. As a result, the Ingelson reference does not disclose a “first vertical support...connected to [a] second vertical support solely by [a] top support member” as recited in part in the Applicant’s claim 1.

For these reasons the Applicant submits that the Ingelson reference does not disclose each and every element of the Applicant’s independent claim 1. Therefore, the Applicant respectfully requests withdrawal of the § 102 rejections for claim 1, and for claim 4, which depends therefrom.

Rejection Under 35 USC § 103 Over Ingelson and Heroy

Claims 5-13, 17 and 18 stand rejected under 35 USC § 103(a) as being unpatentable over Ingelson (US 2,747,959) in view of Heroy (U.S. 3,669,278). The Applicant does not admit that any characterization by the Office Action regarding these rejections is correct, but discusses such characterizations herein for the sake of argument. The Applicant notes that claim 13 is canceled. The Applicant traverses the rejections of the pending claims under 35 USC § 103 over the Ingelson and Heroy references for the reasons discussed below.

As described above, the Ingelson reference does not appear to describe, teach, or suggest “a substantially horizontal top support member” or vertical support members “connected ...solely by the top support member,” as recited in part in the Applicant’s independent claim 1, as currently amended. From the Applicant’s review, the Heroy reference does not appear to cure this deficiency. For this reason the Applicant submits that the Ingelson reference and the Heroy reference, independently or in combination, do not describe, teach, or suggest each and every element of the Applicant’s independent claim 1. As a result, the Applicant’s independent claim 1 would not have been obvious to one of ordinary skill in the art at the time the invention was made. Therefore, the Applicant respectfully requests withdrawal of the § 103 rejections for claims 5-13, 17 and 18, which depend from independent claim 1.

Appl. No. 10/764,190
Atty. Docket No. 9495
Response dated June 19, 2008
In response to Office Action of December 19, 2007
Customer No. 27752

Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the cited references. Accordingly, the Applicant respectfully requests reconsideration of this application and allowance of the pending claims.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By


Charles R. Ware
Registration No. 54,881
(513) 634-5042

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Customer No. 27752